

IN THE INCOME TAX APPELLATE TRIBUNAL
“K” BENCH, MUMBAI
BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)
&
SHRI GIRISH AGRAWAL (ACCOUNTANT MEMBER)

I.T.A. No. 2047/Mum/2014
Assessment Year: 2009-10

<p>Franklin Templeton International Services (India) P. Ltd. Tower 2, 13th Floor, Indiabulls Finance Centre, Senapati Bapat Marg, Elphinstone(West), Mumbai - 400013.</p> <p>PAN: AAACF6496L</p>	Vs.	<p>DCIT CIR 3(1) Room No.607,Aayakar Bhavan, M.K. Marg, Mumbai-400020</p>
(Appellant)		(Respondent)

I.T.A. No. 1495/Mum/2015
Assessment Year: 2010-11

<p>Franklin Templeton International Services (India) P. Ltd. Tower 2, 13th Floor, Indiabulls Finance Centre, Senapati Bapat Marg, Elphinstone(West), Mumbai - 400013.</p> <p>PAN: AAACF6496L</p>	Vs.	<p>DCIT CIR 6 3(1) Room No.522,Aayakar Bhavan, M.K. Marg, Mumbai-400020</p>
(Appellant)		(Respondent)

Appellant by	Shri Anish Thacker & Pranay Gandhi
Respondent by	Shri Bhagirath Ramawat – SR. DR.

Date of Hearing	22.01.2026
Date of Pronouncement	20.02.2026

ORDER

Per: Smt. Beena Pillai, J.M.:

Present appeals arises out of the final assessment orders dated 23.01.2014 and 06.01.2015 for assessment years 2009-10 & 2010-11 on following grounds of appeal:

Assessment Year 2009-10

Ground 1- Transfer Pricing Adjustment relating to Data Processing Services Rs. 11,97,15,774 and Software Services Rs. 6,34,82,242

1.1. On the facts and in the circumstances of the case, the learned Transfer Pricing Officer ('TPO') and the learned Assessing Officer ('AO') under the directions of the Hon'ble Dispute Resolution Panel ('DRP') erred on facts and in law in making an addition of Rs. 11,97,15,774 and Rs. 6,34,82,242 to the international transactions of provision of data processing and software services respectively of the Appellant based on the provisions of Chapter X of the Income-tax Act, 1961 ('the Act').

1.2. The learned AO/TPO under the directions of the Hon'ble DRP erred on facts and in law in disregarding the various submissions made by the Appellant without providing any cogent reasons thereof and also erroneously rejected the benchmarking analysis and comparable companies selected by the Appellant without appreciating the fact that such selection was based on contemporaneous data and the transfer pricing study report prepared and maintained as per Section 92D of the Act read with Rule 10D of the Income-tax Rules, 1962 ('the Rules').

Inclusion of comparable for Data Processing & Support services segment:

1.3.1 The learned AO/TPO under the directions of the Hon'ble DRP erred on facts and in law in applying the filter of diminishing revenue and persistent loss as well as different financial year ending and rejecting the following comparable companies which were accepted by the appellant in the transfer pricing study as a comparable company in respect of the Data Processing and Support Services Segment.

- NIIT Smartserve Ltd.
- KPIT Cummins Global Business Solutions Ltd.
- Allsec Technologies Ltd
- R-Systems International Ltd

Rejection of comparable for Data Processing & Support services segment:

1.3.2 The learned AO/TPO under the directions of the Hon'ble DRP erred on facts and in law in considering the following comparable companies in respect of Data Processing and Support Services Segment without taking into consideration the differences in the functions performed, assets employed and risks undertaken between the Appellant and the alleged comparables:

- Cosmic Global Ltd
- e4e Healthcare Solutions Ltd. (Nittany outsourcing Services Pvt Ltd.)
- Infosys BPO Ltd.
- Caliber Point Business Solutions Ltd.

1.4. The learned AO/TPO erred in not following the directions of the Hon'ble DRP in letter and spirit by not verifying all the claims of the assessee for the mistakes apparent from record relating to erroneous observations made by the TPO/AO on the comparables.

Rejection of comparable for Software support services segment:

1.5.1 The learned AO/TPO under the directions of Hon'ble DRP erred on facts and in law in considering the following comparable companies in respect of software support services segment without taking into consideration the differences in the functions performed, assets employed and risks undertaken between the Appellant and the alleged comparables:

- Bodhtree Consulting Ltd.
- Infosys Technologies Ltd.
- KALS Information Systems
- Wipro Limited
- Genesys International Corporation Ltd.

The learned AO/TPO under the directions of the Hon'ble DRP erred on facts and in law in selectively using data obtained using powers available under Section 133(6) which, based on the principle of 'impossibility of performance', the Appellant could not possibly have access to as the same was not available in public domain at the time of carrying out the benchmarking exercise.

1.7. The learned AO/TPO under the directions of the Hon'ble DRP erred on facts and in law in not allowing appropriate adjustments to the comparables as was compulsorily required to be done in accordance with the provisions of Rule 10B(1)(e) (iii) of the Rules, to account for difference between international transactions and the alleged comparable uncontrolled transactions selected by the learned AO/TPO.

1.8. The learned AO/TPO under the directions of the Hon'ble DRP erred on facts and in law in arbitrarily rejecting the without prejudice contention of the Appellant of computing the margin of alleged comparable companies based on multiple year financial data.

1.9. The learned AO/TPO under the directions of the Hon'ble DRP erred on facts and in law in not appreciating the fact that there was no intention whatsoever on the part of the Appellant to shift profits outside India.

1.10. The learned AO/TPO under the directions of the Hon'ble DRP erred in being inconsistent in its approach of computation of margins of the assessee and the alleged comparable companies by not considering the revised margins submitted by the assessee based on similar income/expenses considered as operating by the assessee as was used by the AO/TPO for computation of margins of comparables.

The Appellant prays that the adjustment in relation to transfer pricing matters made by the learned AO/TPO and upheld by the Hon'ble DRP in respect of data processing and software services be deleted.

Ground 2 - Disallowance of repairs and maintenance expenses amounting to Rs. 29,47,184

2.1. On the facts and in the circumstances of the case, the learned AO while giving effect to the directions of the Hon'ble DRP erred on facts and in law in making an addition of Rs. 29,47,184 with respect to repairs and maintenance expenses, which mainly comprises:

- Payment made to Kone Elevators India Private Limited ("Kone") amounting to Rs. 9,39,584;

and

- Year-end provision for repair and maintenance expense amounting to Rs. 20,07,600

2.2. The learned AO erred in law in not following the directions of the Hon'ble DRP to verify and allow the claim of the Appellant with respect to payment made to Kone and the tax deducted at source ("TDS") applicable thereon.

2.2.1. The learned AO, even after being so directed by the Hon'ble DRP, erroneously overlooked that no TDS was applicable on payments made to Kone based on the certificates under section 197(1) of the Act authorizing non-deduction of TDS from payments to Kone, copies of which were submitted by the Appellant to the DRP and the AO.

2.2.2. The learned AO erred on facts and in law in disallowing the payment made to Kone without giving any opportunity to the Appellant to explain the position.

2.3. Further, the learned AO erred on facts and in law in disallowing Rs. 20,07,600 in relation to incremental year-end provision for repairs and maintenance.

2.3.1. The learned AO without appreciating that the provision was made based on normal accounting provisions, disallowed the incremental year-end provision made on account of repairs & maintenance.

2.3.2. Further, the learned AO also failed to appreciate that a substantial portion of the provision (Rs. 53,27,329 out of total provision for year ended March 2009 of Rs. 66,71,400) had in fact subsequently materialized, as corresponding bills were received, copies of which were also submitted to the DRP and AO.

2.3.3. Further, the learned AO did not also appreciate that the remaining portion of the provision for which bills were not received stood reversed in the subsequent year, as the entire year-end provision of Rs. 66,71,400 was reversed at the beginning of the subsequent year and accordingly was considered in computing income of the subsequent year.

2.3.4. The learned AO erred on facts and in law in disallowing the said item without giving any opportunity to the Appellant to explain the position.

The Appellant therefore prays that the addition in relation to repairs and maintenance expenses made by the learned AO while giving effect to the order of the Hon'ble DRP be deleted.

Ground 3 - Deduction for repairs and maintenance cost - alternate to ground no. 2

3.1. **Without prejudice to Ground 2 above**, the learned AO erred on fact and in law in not allowing further deduction under section 10A/ 10B of the Act from the total income computed by him, particularly on account of the disallowance of Rs. 29,47,184, referred to in ground 2 above.

3.2. **Without prejudice to 3.1 above**, the relief should be granted in assessment year 2010-2011 wherein the Company has reversed provision of Rs. 66,71,400 and offered the same for tax.

The Appellant therefore prays that it be appropriately allowed the deduction under section 10A/ 10B of the Act. Alternatively the Appellant prays that it be appropriately granted relief in assessment year 2010-11.

Ground 4 - Penalty Proceedings under Section 271(1)(c) of the Act

4.1. On the facts and in the circumstances of the case, the learned AO has erred in law in initiating penalty proceedings under Section 271(1)(c) of the Act.

The Appellant prays that the penalty proceedings be dropped in the matter.

Ground 5 - Levy of interest under section 234B of the Act

5.1. On the facts and in the circumstances of the case, the learned AO has erred in charging interest of Rs. 2,81,17,008.

The Appellant prays that the AO be directed to grant relief in respect of levy of interest under section 234B of the Act, in consequence to relief granted in respect of the aforesaid grounds of appeal.

Ground 6- Levy of interest under section 234D of the Act

6.1. On the facts and in the circumstances of the case, the learned AO has erred in charging interest of Rs. 11,58,618 under section 234D of the Act.

The Appellant prays that the AO be directed to grant relief in respect of levy of interest under section 234D of the Act, in consequence to relief granted in respect of the abovementioned grounds of appeal.

6.2. **Without prejudice to all the above**, the learned AO has erred in charging interest of Rs. 11,58,618 under section 234D of the Act for 42 months, whereas he should have charged interest for only 38 months (December 2010 to January 2014).

6.3. The AO erred in facts and in law in not taking into account that refund of Rs. 55,17,230 pertaining to AY 2009-10 was adjusted on 4 December 2010 against demand of AY 2006-07 and interest under section 234D would arise from 4 December 2010 up to 31 January 2014, being the date of receipt of the assessment order of AY 2009-10.

Therefore, the Appellant prays that without prejudice to all the other abovementioned grounds, the AO be directed to correctly calculate interest under section 234D of the Act.

Ground 7 - Consequential reliefs

7.1. The Appellant prays that the AO be directed to grant all consequential reliefs arising out of reliefs from this appeal.

7.2. The Appellant craves leave to add to, alter, amend or withdraw all or any of the grounds of appeal herein above and to submit such statements, documents and papers as may be considered necessary either at or before the hearing of this appeal as per law.

Additional Grounds (Raised vide letter dated 16 November 2022)

Transfer pricing order passed by Additional Commissioner of Income-tax (Transfer Pricing) - 1(3), Mumbai is beyond jurisdiction

1. The order under section 92CA(3) of the Act passed by the Additional Commissioner of Income-Tax (Transfer Pricing) -1(5), Mumbai is without jurisdiction and bad in law since Additional Commissioner of Income-Tax (Transfer Pricing) cannot be a TPO as per section 92CA of the Act for the year under consideration;

2. The Ld. AO erred in a passing draft assessment order in the case of the Appellant in lieu of the final assessment order given that the Appellant does not fall within the definition of "eligible assessee" as per Section 144C of the Act as the transfer pricing order is invalid and thus entire assessment is bad in law as provisions of section 144C(1) of the Act are not applicable to the Appellant,

Final assessment order passed is time barred

1. Without prejudice to the above, the Ld. AO erred in not passing the final assessment order within the time limit prescribed under section 153 of the Act which is the outer time limit for passing the final assessment order and hence, the final assessment order dated 23 January 2014 which is passed after 31 December 2011 (time limit as per Section 153 of the Act) is time barred and liable to be quashed;

Claim for additional depreciation

1. The AO erred in not allowing depreciation of Rs. 7,17,193 on the written down value of assets being items included to block of assets of Computer, Plant and Machinery, Building consequent to disallowance of revenue expenditure in the assessment orders of assessment year 2004-05, 2005-06 and 2006-07.

Assessment Year 2010-11

Ground 1 Transfer Pricing Adjustment relating to Data Processing Services Rs. 9,01,18,424 and Software Services Rs. 5,95,81,859 - Adjudicated relying on charts enclosed at Page 48 to 51 and 87 to 91 of the Supplementary Paperbook

1.1. On the facts and in the circumstances of the case, the learned Transfer Pricing Officer ('TPO') and the learned Assessing Officer ('AO') under the directions of the Hon'ble Dispute Resolution Panel ('DRP') erred on facts and in law in making an addition of Rs. 9,01,18,424 and Rs. 5,95,81,859 to the international transactions of provision of data processing and software services respectively of the Appellant based on the provisions of Chapter X of the Income-tax Act, 1961 ('the Act').

1.2. The learned AO/TPO under the directions of the Hon'ble DRP erred on facts and in law in disregarding the various submissions made by the Appellant without providing any cogent reasons thereof and also erroneously rejected the benchmarking analysis and comparable companies selected by the Appellant without appreciating the fact that such selection was based on contemporaneous data and the transfer pricing study report prepared and maintained as per Section 92D of the Act read with Rule 10D of the Income-tax Rules, 1962 ('the Rules').

Inclusion of R-Systems International Ltd as comparable:

1.3. The learned AO/TPO under the directions of the Hon'ble DRP erred on facts and in law in applying the filter of a different financial year and rejecting R Systems International Ltd which was accepted by the appellant in the transfer pricing study as a comparable company in respect of the Data Processing and Support Services Segment.

Rejection of comparable for Data processing & support services segment:

1.4.1 The learned AO/TPO under the directions of the Hon'ble DRP erred on facts and in law in considering the following comparable companies in respect of Data Processing and Support Segment without taking into consideration the differences in the functions performed, assets employed

and risks undertaken between the Appellant and the alleged comparables:

- E4e Healthcare Solutions Ltd (Nittany Outsourcing Services Pvt Ltd)
- Infosys BPO Ltd
- ICRA Online Ltd
- Cosmic Global Ltd

Rejection of comparable for Software support services segment:

1.4.2 The learned AO/TPO under the directions of the Hon'ble DRP erred on facts and in law in considering the following comparable companies in respect of Software Support Services Segment without taking into consideration the differences in the functions performed, assets employed and risks undertaken between the Appellant and the alleged comparables:

- Infosys Ltd.
- KALS Information Systems (Segment Application software)
- Wipro Limited
- Persistent Systems Ltd.
- Thirdware Solutions Ltd
- Larsen and Toubro Infotech Limited
- Sasken Communication Technologies Ltd.

1.5. The learned AO/TPO under the directions of the Hon'ble DRP erred on facts and in law in selectively using data obtained using powers available under Section 133(6) which, based on the principle of 'impossibility of performance', the Appellant could not possibly have access to as the same was not available in public domain at the time of carrying out the benchmarking exercise.

1.6. 1.6-The learned AO/TPO under the directions of the Hon'ble DRP erred on facts and in law in not allowing-appropriate adjustments to the comparables as was compulsorily required to be done in accordance with the provisions of Rule 10B(1)(e) (iii) of the Rules, to account for difference between international transactions and the alleged comparable uncontrolled transactions selected by the learned AO/TPO.

1.7. The learned AO/TPO under the directions of the Hon'ble DRP erred on facts and in law in arbitrarily rejecting the without prejudice contention of the Appellant of computing the margin of alleged comparable companies based on multiple year financial data.

1.8. The learned AO/TPO under the directions of the Hon'ble DRP erred on facts and in law in not appreciating the fact that there was no intention whatsoever on the part of the Appellant to shift profits outside India.

The Appellant prays that the adjustment in relation to transfer pricing matters made by the learned AO/TPO and upheld by the Hon'ble DRP in respect of data processing and software services be deleted.

Ground 2 - Penalty Proceedings under Section 271(1)(c) of the Act
The said ground is premature at this stage.

2.1. On the facts and in the circumstances of the case, the learned AO has erred in law in initiating penalty proceedings under Section 271(1)(c) of the Act.

The Appellant prays that the penalty proceedings be dropped in the matter.

Ground 3 - Levy of interest under section 234B of the Act - The said ground is consequential in nature

3.1. On the facts and in the circumstances of the case, the learned AO has erred in charging interest of Rs. 1,49,70,496.

The Appellant prays that the AO be directed to grant relief in respect of levy of interest under section 234B of the Act, in consequence to relief granted in respect of the aforesaid grounds of appeal.

Ground 4 - Levy of interest under section 234D of the Act - The said ground is consequential in nature

4.1. On the facts and in the circumstances of the case, the learned AO has erred in charging interest of Rs. 2,01,958 under section 234D of the Act.

The Appellant prays that the AO be directed to grant relief in respect of levy of interest under section 234D of the Act, in consequence to relief granted in respect of the abovementioned grounds of appeal.

Ground 5 - Consequential reliefs

5.1. The Appellant prays that the AO be directed to grant all consequential reliefs arising out of reliefs from this appeal.

5.2. The Appellant craves leave to add to, alter, amend or withdraw all or any of the grounds of appeal herein above and to submit such statements, documents and papers as may be considered necessary either at or before the hearing of this appeal as per law.

Transfer pricing order passed by Additional Commissioner of Income-tax (Transfer Pricing) - 1(3), Mumbai is beyond jurisdiction - The ground was not pressed

1. Reference to the Additional Commissioner of Income-Tax (Transfer Pricing) - 1(3), Mumbai and the transfer pricing order under section 92CA(3) of the Act passed by the Additional Commissioner of Income-Tax (Transfer Pricing) - 1(3), Mumbai are without jurisdiction and bad in law since Additional Commissioner of Income-Tax (Transfer Pricing) cannot be a TPO as per section 92CA of the Act for the year under consideration;

2. The Ld. AO erred in passing a draft assessment order in the case of the Appellant in lieu of the final assessment order given that the

Appellant does not fall within the definition of "eligible assessee" as per Section 144C of the Act as the transfer pricing order is invalid and thus entire assessment is bad in law as provisions of section 144C(1) of the Act are not applicable to the Appellant;

Final assessment order passed is time barred - The ground was requested to be kept as academic.

1. Without prejudice to the above, the Ld. AO erred in not passing the final assessment order within the time limit prescribed under section 153 of the Act which is the outer time limit for passing the final assessment order and hence, the final assessment order dated 6 January 2015 which is passed after 31 December 2012 (time limit as per Section 153 of the Act) is time barred and liable to be quashed;

Claim for additional depreciation - The ground was adjudicated based on earlier year's order (Relevant pages attached at Page 108)

1. The AO erred in not allowing depreciation of Rs. 6,24,633 on the written down value of assets being items included to block of assets of Computer, Plant and Machinery, Building consequent to disallowance of revenue expenditure in the assessment orders of assessment year 2004-05, 2005.

Brief facts of the case are as under:

2. Assessee is a company engaged in the business of providing information technology enabled services and development and maintenance of global web based services. The assessee filed its return of income for assessment year 2009-10 on 02.09.2009 declaring total income at Rs.6,21,63,063/-. For assessment year 2010-11 it filed its return of income on 01.10.2010 declaring total income at Rs.6,00,91,689/-. The case was selected for scrutiny for both the years under consideration and notice u/s 142(1) was issued to the assessee calling for various details in respect of the assessment proceedings. In response to the statutory notice, assessee furnished requisite details as called for. The Ld. AO observed that assessee had entered into international transaction with its associated enterprise for both years that exceeded the threshold limit.

2.1 Accordingly, a reference was made to the Transfer Pricing Officer to determine the arm's-length price of the transaction for both years under consideration. Upon receipt of the reference, the Ld. TPO called upon assessee to furnish details of the international transaction in Form 3CEB.

2.2 The Ld. TPO observed that, Franklin Templeton Holdings Ltd Mauritius was 100% subsidiary of Templeton Asset Management Ltd Singapore. And that, Franklin Templeton Holdings Ltd Mauritius is the holding company of assessee in India. The Ld.TPO observed that, assessee is primarily engaged in providing back-office processing services and software development services to the group companies worldwide.

2.3 The details of international transaction undertaken by the assessee during the year under consideration are as under:

Particulars	AY 2009-10	AY 2010-11
Provision of data processing services	12,95,62,432/-	9,01,18,424/-
Provision of software development services	06,39,10,887/-	5,95,81,859/-

Assessment Year 2009-10

3. From the transfer pricing study report, the Ld. TPO noted that, assessee used Transactional Net Margin Method as the most appropriate method and OP/OC as PLI to compute its margin under both the segment at 18.2% and 16.7% for data processing and software development services respectively.

Data Processing Service Segment:

3.1 The Ld. TPO noted that assessee used following comparables with arithmetic mean of 13.55%:

Sl. No.	Name of the Company	Wtd. Avg.
1	Allsec Technologies Ltd.	-8.68
2	Caliber Point Business Solutions Ltd.	29.67
3	Cosmic Global Ltd.	50.78
4	Datamatatics Technologies Ltd.	-4.24
5	ICRA Techno Analytics Ltd.*	10.01
6	Informed Technologies India Ltd.	23.13
7	Infosys BPO Ltd.	24.62
8	Inhouse Productions Ltd.*	5.44
9	KPIT Cummins Global Business Solutions Ltd.	-16.40
10	NIIT Smartserve Ltd.	2.82
11	Nittany Outsourcing Services Ltd.	33.85
12	R Systems International Ltd.*	11.64
	Arithmetical Mean	13.55

Based on the above, assessee treated its margin under the data processing service segment to be at arm's length.

3.2 Dissatisfied with the comparables selected by the assessee, the Ld. TPO applied certain filters and selected following 06 comparables with average margin of 28.66%:

Sl. No.	Name of the Comparable	Margin for FY 2008-09
1	Cosmic Global Ltd.	50.68%

2	<i>Caliber Point Business Solutions Ltd.</i>	29.67%
3	<i>Nittany Outsourcing Services Ltd. (Now known as e4e Healthcare Services Pvt. Ltd.)</i>	33.85%
4	<i>Informed Technologies India Ltd.</i>	23.13%
5	<i>ICRA Techno Analytics Ltd.*</i>	10.01%
6	<i>Infosys BPO Ltd.</i>	24.62%
	Average	28.66%

The Ld. TPO thus proposed an adjustment of Rs.12,95,62,432/- being the short fall.

Software Development Service Segment:

3.3 The Ld. TPO noted that the assessee computed its margin at 16.70%. It was noted that assessee used following 24 comparables with an arithmetic mean of 14.79%:

SI. No.	Particulars	Wtd. Avg. Margin (%)
1	<i>Akshay Software Technologies Limited</i>	6.17%
2	<i>Aztecsoft Limited</i>	8.38%
3	<i>Birla Technologies Ltd.</i>	-1.77%
4	<i>CG Vak Software & Exports Limited</i>	5.73%
5	<i>Computech International Ltd.</i>	1.94%
6	<i>Helios & Matheson Information Technology Ltd.</i>	28.52%
7	<i>Infosys Technologies Ltd.</i>	41.09%
8	<i>LGS Global Ltd. (Lanco Global)</i>	22.00%
9	<i>Larsen & Toubro Infotech Limited</i>	16.97%
10	<i>Mindtree Ltd.</i>	10.91%
11	<i>PSI Data Systems Ltd.</i>	2.94%
12	<i>Persistent Systems Private Ltd.</i>	26.40%
13	<i>Powersoft Global Solutions Ltd.</i>	19.26%
14	<i>Prithvi Information Solutions Ltd.</i>	7.03%
15	<i>Quinnox Consultancy Services Ltd.</i>	11.70%
16	<i>Quintegra Solutions Ltd.</i>	18.20%
17	<i>R S Software (India) Ltd.</i>	9.66%
18	<i>R Systems International Ltd.</i>	11.82%
19	<i>Sagarsoft (India) Ltd.</i>	13.49%
20	<i>Sasken Communications Technologies Ltd.</i>	15.90%
21	<i>Sonata Software Limited</i>	25.54%
22	<i>Tata Elxi Ltd.</i>	21.44%

23	<i>Thirdware Solutions Ltd.</i>	23.31%
24	<i>Vama Industries Limited</i>	8.35%
	Arithmetic Mean	14.79%

Based on the above, assessee treated its margin under the software development service segment to be at arm's-length.

3.4 Dissatisfied with the comparables selected by the assessee, the Ld. TPO applied certain filters and selected following comparables with an average margin of 25.14%:

SI. No.	Particulars	Wtd. Avg. Margin (%)
1	<i>Akshay Software Technologies Limited</i>	12.41%
2	<i>Bodhtree Consulting Ltd.</i>	67.28%
3	<i>CG Vak Software & Exports Limited</i>	8.27%
4	<i>FCS Software Solutions Ltd.</i>	40.50%
5	<i>Genesys International Corporation Ltd.</i>	58.47%
6	<i>Infosys Technologies Ltd.</i>	42.05%
7	<i>KALS Information Systems</i>	41.95%
8	<i>LGS Global Ltd. (Lanco Global)</i>	20.50%
9	<i>Larsen & Toubro Infotech Limited</i>	17.17%
10	<i>Mindtree Ltd.</i>	4.49%
11	<i>Persistent Systems Private Ltd.</i>	16.18%
12	<i>Powersoft Global Solutions Ltd.</i>	24.63%
13	<i>Quintegra Solutions Ltd.</i>	12.88%
14	<i>R S Software (India) Ltd.</i>	9.99%
15	<i>R Systems International Ltd.</i>	10.85%
16	<i>Sasken Communications Technologies Ltd.</i>	15.99%
17	<i>Sonata Software Limited</i>	29.97%
18	<i>Tata Elxi Ltd.</i>	20.29%
19	<i>Thirdware Solutions Ltd.</i>	22.37%
20	<i>Wipro Ltd. (Seg.)</i>	26.64%
	Arithmetic Mean	25.14%

The Ld. TPO thus proposed an adjustment of Rs.6,39,10,887/- being short-fall.

4. Upon receipt of the order passed under section 92CA(3), the Ld.AO passed draft assessment order by making disallowance under section 14A of the act at Rs.3,17,449/-, disallowance of repairs and maintenance expenses of Rs.29,47,184/-. The Ld.AO further made the disallowance of Section 14A while computing book profits u/s 115JB.

Upon the receipt of the draft assessment order, assessee preferred objections before the DRP.

4.1 The DRP upheld the comparables selected by the Ld. TPO in totality under both the segments. In respect of the disallowance made by the Ld. AO u/s 14A and other miscellaneous heads, the DRP confirmed the additions proposed.

5. On receipt of the DRP directions the Ld. AO passed the impugned order by making addition in the hands of the assessee at Rs.18,64,62,649/-. The Ld. AO also computed the book profits u/s 115JB of the Act by including the disallowance made u/s 14A.

Assessment Year 2010-11

6. From the Transfer Pricing study report the Ld. TPO noted that assessee used transactional net margin method to compute the margin of the services rendered under Data Processing Service and Software Development Service Segment by using OP/OC as PLI.

Data Processing Service Segment

6.1 The assessee thus computed its margin under Data Processing Service Segment at 12.48%. It was noted that

assessee used following 12 comparables with an arithmetic average mean of 16.55%:

SI. No.	Name of the Company	Wtd. Avg.
1	Cosmic Global Ltd.	26.55%
2	Aditya Birla Minacs Worldwide Ltd. (Formerly Transwork Information Services Ltd.)	9.32%
3	Datamatics Financial Services Ltd.	-3.31%
5	ICRA Techno Analytics Ltd.- (segmental)	13.81%
6	R Systems International Ltd. (seg.)	10.70%
7	Caliber Point Business Solutions Ltd.	22.45%
8	Infosys BPO Ltd.	22.32%
9	Informed Technologies Ltd.	16.15%
10	Crossdomain Solutions Ltd.	28.59%
11	e4e Healthcare Solutions Ltd. (Nittany Outsourcing Services Pvt. Ltd.)	26.64%
12	Inhouse Productions Ltd.	8.82%
	Arithmetical Mean	16.55%

Based on the above the assessee treated its margin under the Data Processing Service Segment to be at arm's length.

6.2 Dissatisfied with the comparables selected by the assessee, the Ld. TPO applied certain filters and selected following comparables with an average margin of 26.05%:

SI. No.	Name of the Company	Wtd. Avg.
1	Cosmic Global Ltd.	14.97%
2	Infosys BPO Ltd.	31.21%
3	Informed Technologies Ltd.	27.50%
4	Crossdomain Solutions Ltd.	19.66%
5	e4e Healthcare Solutions Ltd. (Nittany Outsourcing Services Pvt. Ltd.)	19.52%

6	ICRA Online Limited	43.43%
	Arithmetical Mean	26.05%

The Ld. TPO thus proposed an adjustment for provision of Data Processing Services Segment at Rs.9,01,18,424/- being the short fall.

Software Development Service Segment (SWD)

6.3 The Ld. TPO noted that assessee computed its margin for SWD Segment at 15.83% by using OP/OC as the PLI and adopting TNM method. It was noted that the assessee selected following 15 comparables with a 3 year average margin of 15.69%:

SI. No.	Particulars	Wtd. Avg. Margin (%)
1	Vama Industries Limited	8.34%
2	Powersoft Global Solutions Ltd.	16.93%
3	R Systems International Ltd. (Seg Software development & customisation services)	15.16%
4	CG -Vak Software & Exports Ltd* (Seg Software Services)	-0.02%
5	Eforce India Private Ltd.	3.21%
6	Helios & Matheson Information Technology Ltd.	20.92%
7	Akshay Software Technologies Ltd	8.67%
8	Evoke Technologies Private Ltd	20.22%
9	LGS Global Ltd.	18.13%
10	Mindtree Ltd.	19.57%
11	Persistent Systems Private Ltd.	28.07%
12	R S Software (India) Ltd.	9.11%
13	Sasken Communications Technologies Ltd.	16.79%
14	Tata Elxi Ltd* (Seg Software development & services)	18.86%
15	Thirdware Solutions Ltd.	31.41%
	Arithmetic Mean	15.69%

Based on the above the assessee treated its margin under the Software Development Service Segment to be at arm's length.

6.4 Dissatisfied with the comparables selected by the assessee, the Ld. TPO applied certain filters and selected following comparables with an average margin of 24.12%:

SI. No.	Particulars	Wtd. Avg. Margin (%)
1	Akshay Software Technologies Ltd	-1.07%
2	Evoke Technologies Private Ltd	19.08%
3	LGS Global Ltd.	11.95%
4	Mindtree Ltd.	16.30%
5	Persistent Systems Private Ltd.	29.47%
6	R S Software (India) Ltd.	10.29%
7	Sasken Communications Technologies Ltd.	19.42%
8	Tata Elxi Ltd* (Seg Software development & services)	17.13%
9	Thirdware Solutions Ltd.	28.87%
10	FCS Software Solutions Ltd	47.68%
11	Infosys Technologies Ltd	45.47%
12	KALS Information systems Limited* (Segmental: Application Software)	34.41%
13	Larsen and Toubro Infotech Ltd.	19.24%
14	Sonata Software Limited	35.99%
15	Wipro Ltd.	27.55%
	Arithmetic Mean	24.12%

The Ld. TPO thus proposed an adjustment of Rs.5,95,81,859/-.

Aggrieved by the order of the Ld. AO the assessee is in appeal before the *Tribunal*.

7. At the outset, the Ld. AR submitted that assessee has filed an application for admission of additional grounds on 16.11.2022 raising following issues for both years under consideration:

Transfer pricing order passed by Additional Commissioner of Income-tax (Transfer Pricing) - 1(3), Mumbai is beyond jurisdiction

1. The order under section 92CA(3) of the Act passed by the Additional Commissioner of Income-Tax (Transfer Pricing) -1(5), Mumbai is without jurisdiction and bad in law since Additional Commissioner of Income-Tax (Transfer Pricing) cannot be a TPO as per section 92CA of the Act for the year under consideration;

2. The Ld. AO erred in a passing draft assessment order in the case of the Appellant in lieu of the final assessment order given that the Appellant does not fall within the definition of "eligible assessee" as per Section 144C of the Act as the transfer pricing order is invalid and thus entire assessment is bad in law as provisions of section 144C(1) of the Act are not applicable to the Appellant,

Final assessment order passed is time barred

1. Without prejudice to the above, the Ld. AO erred in not passing the final assessment order within the time limit prescribed under section 153 of the Act which is the outer time limit for passing the final assessment order and hence, the final assessment order dated 23 January 2014 which is passed after 31 December 2011 (time limit as per Section 153 of the Act) is time barred and liable to be quashed;

Claim for additional depreciation

1. The AO erred in not allowing depreciation of Rs. 7,17,193 on the written down value of assets being items included to block of assets of Computer, Plant and Machinery, Building consequent to disallowance of revenue expenditure in the assessment orders of assessment year 2004-05, 2005- 06 and 2006-07.

7.1 He submitted that the assessee has raised legal issue vide additional grounds for both assessment years under consideration. The Ld.AR submitted that the issues raised therein is to challenging validity and legality of the draft assessment order, DRP directions and final assessment order.

7.2 The Ld. AR submitted that additional **Ground No.1** raised by the assessee is to be not pressed as per the instructions.

Accordingly, Ground No.1 is dismissed as not pressed.

7.2.1 In respect of additional **Ground No.2** the Ld. AR submitted that these issues may be treated academic at this stage.

7.3 Considering the submissions of the Ld. AR, additional grounds raised by the assessee vide application dated 16/11/2022 for both the years under consideration are treated as academic and not adjudicated at this stage. However, these grounds are left open to be raised by the assessee in an appropriate circumstances.

Accordingly, the applications dated 16/11/2022 for both the years under consideration are dismissed as not pressed.

Assessment Year 2009-10

8. The Ld. AR submitted that **Ground No.1** raised by the assessee is in respect of the comparables sought for exclusion and inclusion under the data processing service segment and software service segment.

A. Data Processing Service Segment:

The comparables sought for inclusion:

- *NIIT Smartserve Ltd.*
- *KPIT Cummins Global Business Solutions Ltd.*
- *Allsec Technologies Ltd*
- *R-Systems International Ltd*

B. The comparables sought for exclusion:

- *Cosmic Global Ltd*
- *e4e Healthcare Solutions Ltd. (Nittany outsourcing Services Pvt Ltd.)*
- *Infosys BPO Ltd.*
- *Caliber Point Business Solutions Ltd.*

C. Software Development Service Segment:

The comparables sought for exclusion:

- *Bodhtree Consulting Ltd.*
- *Infosys Technologies Ltd.*
- *KALS Information Systems*
- *Wipro Limited*
- *Genesys International Corporation Ltd.*

8.1 Before we undertake the comparability analysis, it is *sine qua non* to understand the functions performed, assets owned and risk assumed by the assessee under both the segments.

“4 Functional Analysis

4.1 Functions performed

FTIS undertakes back office transaction processing, data processing, business support services and software development services for overseas FTI Group entities. These services are provided by various units set up by FTIS. Services rendered by various units of FTIS to the overseas FTI Group entities are discussed below:

4.1.1 Data Management and Security Services

Global RFP Management Unit: This unit provides online data requested by the Franklin Templeton Institutional, LLC ('FTI LLC') FTI LLC is providing investment advisory services. The Global RFP Management Unit of FTIS provides data analysis, ratio calculation etc. relevant to investment advisory services of FTI LLC on a quarterly or monthly basis as required by FTL LLC.

Investment Operation Unit: This unit of FTIS sets up and maintains system and database security of Franklin Templeton Services, LLC ('FTS LLC').”

“4.1.7 Testing Services

Testing Services (TS) in India had been started as an extension team to St. Petersburg Testing Services in January 2004. The objective of the TS is to be a global unit, which will cater to all testing requirements for software applications within Franklin Templeton Group.”

“4.2 Risks assumed

4.2.1 Contract risk

Contract risk is faced by a contracting entity in respect of the quality of work and other deliverables, as well as any obligations emanating from the contract. As FTIS does not directly enter into any contract with the customers and it contracts only with the overseas FTI Group entities, it does not bear the contract risk.

4.2.2 Idle time risk

Idle time risk is the risk that a business faces of not getting sufficient billable work to occupy the time of staff. We understand that FTIS would be insulated from idle time risk, as it would be compensated based on installed capacity.

4.2.3 Attrition risk

Attrition risk is the risk faced by an enterprise of losing its trained personnel. Competitive market forces expose an enterprise to this risk particularly in a high-technology domain. The employee turnover (attrition rate) in the industry in which FTIS operates is high. Further, recruiting right kind of people takes time. The delay in recruitment process leads to loss of revenue due to consequential delay in migration. Such risks are borne by FTIS.

4.2.4 Market risk

Market risk arises due to uncertainty in the structure of the market, demand patterns and needs of the customers, costs, pricing etc. FTIS does not face significant market risks as it provides services to overseas FTI Group entities.

4.2.5 Credit risk

Credit risk is the risk arising from non-payment of dues by customers. As the customers of FTIS are the overseas FTI Group entities, FTIS does not face any significant credit risk.

4.2.6 Currency risk

Currency risk is the risk of any adverse fluctuation in exchange rates, which would eventually have a negative impact on the profitability. FTIS receives service fee from overseas FTI Group entities in foreign exchange but incurs expenses in Indian Rupees. Accordingly it bears normal foreign exchange currency risks.

4.2.7 Risk of disruption of infrastructure

Outsourcing business models rely heavily on the internet/telecommunications infrastructure. Accordingly, FTIS faces the risk of a disruption in the infrastructure.

4.2.8 Database maintenance risk

Since the processes carried out by FTIS are system driven, i.e., all the transactions have to be processed on computer systems, there is a threat of loss of data. However, the same are mitigated by ensuring planned and periodic back ups.

Summary of key business risks faced by FTIS and overseas FTI Groupe tabulated below

Type of risk	FTIS	Overseas FTI Group entities
Contract risk	X	✓
Idle time risk	X	✓
Attrition risk	✓	X
Market risk	X	✓
Credit risk	X	✓
Currency risk	✓	X
Risk of disruption of infrastructure	✓	X
Database maintenance risk	✓	X

4.3 Assets Employed

FTIS deploys necessary assets to perform its functions effectively. The assets maintained by FTIS include computers, office equipment, furniture and fixtures and human capital. FTIS does not own any valuable non-routine intangible assets.

Data Processing Service Segment

It is submitted that the assessee seeking inclusion of following comparables:

- NIIT Smartserve Ltd.
- KPIT Cummins Global Business Solutions Ltd.
- Allsec Technologies Ltd
- R-Systems International Ltd

8.2 The Ld. AR submitted that 4 comparables were rejected by the authorities by stating the reason that they are consistent loss making companies. He submitted that KPIT Cummins Global Business Solutions Ltd., NIIT Smartserve Ltd. & Allsec Technologies Ltd. were rejected on this ground even though they were functionally similar to the assessee.

8.2.1 The Ld. AR submitted that in case of KPIT Cummins Global Business Solutions Ltd., the details of the revenue earned by this company and the net cost plus margin over the preceding 2 years were as under:

AY 2007-08: Revenue INR 294.5 million; NCP margin: 31.94%

AY 2008-09: Revenue INR 329.5 million; NCP margin: -7.01%

AY 2009-10: Revenue INR 486.4 million; NCP margin: -16.40%

It was submitted that KPIT is not a consistent loss making company as is evident from the net cost plus margin over the years. The Ld. AR placed reliance on the annual report of this company placed at page No.371 of the paper-book in support of his contention. He also placed reliance on following decisions in support of the argument that a company which is functionally comparable may not be rejected merely because it is a loss making company unless it is persistently loss making:

1. *Welspun Zucchi Textiles Ltd [ITA No. 1286 of 2014 (Bombay High Court)]* [Refer page no B142 - B146 of the Legal Paper Book]

2. *Goldman Sachs (India) Securities Pvt. Ltd. [ITA No. 2222/HC/Bom/2013 (Bombay HC)]* [Refer page no B147 – B150 of the Legal Paper Book]

3. *TPG Capital India (P.) Ltd. [2017] 79 taxmann.com 101 (Mumbai - Trib.)*
– Page 56 of the Supplementary Paperbook

4. *Bobst India (P.) Ltd. [2015] 63 taxmann.com 339 (Pune - Trib.)* - Para 5.4 – Page 64 to 65 of the Supplementary Paperbook

8.3 Similar was the argument advanced by the Ld. AR for NIIT Smartserve Ltd. He placed reliance on the annual report at page No.370 of the paper-book wherein the cost plus margin over 3 years of this comparable is stated to be as under:

AY 2007-08: P/L: -25,700,000; NCP margin: -4.37%

AY 2008-09: P/L: -36,400,000; NCP margin: -6.42%

AY 2009-10: P/L: 12,466,667; NCP margin: 2.82%

8.4 In respect of Allsec Technologies Ltd. the Ld. AR submitted that this comparable was excluded by the Ld. TPO for the reason that it did not satisfy the export filter of 75%. The Ld. AR submitted that, this company was rejected by Ld. TPO stating that it is into consistent losses.

8.4.1 The Ld. AR on the contrary submitted that the reasoning by the Ld. TPO to exclude this company is factually incorrect. He submitted that this company has earned income from export which is 74.5% of the total revenue, and the filter applied by the Ld. TPO is 75%. He submitted that such marginal difference does not lead to the conclusion that this company fails in this filter.

8.4.2 The Ld. AR submitted that this company is not into persistent loss making. He referred to page No. 367 & 414 of the paper-book wherein the margins of this company over the 3 preceding years are as under:

-AY 2007-08: 27.31%

-AY 2008-09: (-)13.87%

-AY 2009-10: (-) 8.68%

8.4.3 The Ld. AR also placed reliance on the decisions cited supra in support of this contention that this company deserves to be included.

8.5 On the contrary, the Ld. DR submitted that all the above comparables were rejected by the authorities below, on the ground of persistent loss earned in the preceding years. He also submitted that in the event these comparables are accepted for inclusion they may be remanded to the Ld. TPO as factual compatibility has not been verified.

We have perused the submissions advanced by both sides in the light of records placed before us.

8.6 A persistent loss making company is typically defined for tax and transfer pricing purposes as an entity incurring operating losses consistently for 3 consecutive assessment years. Such companies are often excluded from bench marking analysis as their financial results do not represent normal market conditions.

8.6.1 On perusal of the facts and figures provided by the Ld. AR it is noted that KPIT Cummins Global Business Solutions Ltd., NIIT Smartserve Ltd. & Allsec Technologies Ltd. was not a persistent loss making companies as they have earned profits during assessment year 2007-08.

8.6.2 On functional similarity it is noted that the Ld. TPO has looked into the far off the companies while applying various filters as is evident from the chart reproduced in the order passed u/s 92CA accepting/rejecting the comparables of the assessee.

8.6.3 According to Rule 10B(4) of the Income Tax Rules 1962 the data relevant for a time period for 2 preceding years is to be considered. In the present facts of these companies in one of the year comparables has declared profit. We also refer to the decision of *Hon'ble Chandigarh Special Bench* in case of *DCIT Vs. Quark Systems Pvt. Ltd.* reported in (2010) 132 TTJ 1, wherein it was held that consistently loss making entities cannot be solely rejected for the fact that they have incurred consistent losses.

8.6.4 Having regards to the ratio laid down therein and also considering the fact that one of the year amongst the 3 preceding years, these companies has earned profit, we do not uphold the action of the Ld. AO in rejecting these comparables. We thus, direct the Ld. AO/TPO to include KPIT Cummins Global Business Solutions Ltd., NIIT Smartserve Ltd. & Allsec Technologies Ltd. into the final list of comparables.

R-Systems International Limited

8.7 This comparable was excluded by the Ld. TPO merely because it followed calendar year for its accounting purposes. The Ld. AR submitted that *Hon'ble Mumbai Tribunal* in case of *Morgan Stanley Advantage Services Private Ltd.* in ITA No. 626/Mum/2014 and decision by *Hon'ble Delhi Tribunal* in case of *Meckensy Knowledge Centre India Private Ltd.* in ITA No. 217/Del/2014 observed that a company cannot be rejected merely because of difference in accounting year. The Ld. AR further contended that this comparable was accepted by the Ld. TPO as functionally similar in AY 2008-09 and 2007-08.

8.7.1 The Ld. DR relied on the orders passed by the authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

8.8 It is noted that, this company has often been contested due to a difference in accounting year as compared to the Indian Financial Year. However, *Tribunals* across the country have held that it cannot be excluded solely on that basis, if it is functionally similar and that contemporaneous, quarterly data available could be extrapolated. Such results could be relevant for the Financial Year that it is to be included.

8.8.1 We place reliance on the decision cited by the Ld. AR hereinabove in support of this view. Respectfully following the same we direct the Ld. AO/TPO to include R-Systems International Limited in the final list.

B. Comparables sought for Exclusion

Cosmic Global Ltd.

9. The Ld. AR submitted that assessee has sought for exclusion of this comparable as it is functionally different with that of the assessee. It is submitted that 95% of the income earned by this company is from outsourcing by sub-contracted services. He submitted that this comparable has incurred significant amount of expenditure on translation charges which is indicative of the fact that it operated on a different business model which is not the case with the assessee.

9.1 He also placed reliance on the annual report of this company to show that the employee cost of this company is only 29% as against the assessee. The Ld. AR submitted that this company was rejected by DRP for assessment year 2007-08 as they were involved in outsourcing/trading services. The Ld. AR also emphasised that though this company was considered by the assessee in the TPS study report, however assessee can seek exclusion of the same based on the decision of *Hon'ble Chandigarh Special Bench* in case of *Quark Systems (supra)*.

9.1.2 He also placed reliance on the following decisions to support the exclusion of this company:

1. *Morgan Stanley Advantage Services Pvt. Ltd. (successor to Morgan Stanley Solutions India Pvt. Ltd.) [ITA No. 626/MUM/2014 (Mumbai ITAT)]* (Refer Page B33 - B48 of the Legal Paper book]
2. *Thomson Reuters India Services Pvt Ltd [IT(TP)A No. 231 and 266/Bang/2014] dated 25 February 2025 (Mumbai ITAT)* (Refer Para 43 to 45 Page 97 to 98 of the Supplementary Paperbook)
3. *ICICI Bank Limited [2025] 180 taxmann.com 804 (Mumbai - Trib.)* Refer page No. B338 to B356 of Legal paperbook - II)

9.1.3 On the contrary, the Ld. DR relied on the orders passed by the authorities below. *We have considered the submissions of both sides and perused the material available on record.*

9.1.4 *From the perusal of the annual report of Cosmic Global Ltd for the financial year 2008-09, forming part of the paper book from pages 1310-1327, we find that the company has significant payment, i.e. Rs. 3,00,25,326/-, towards translation charges, which constitutes 57.31% of the total operating expenditure of Rs. 5,24,15,463. Thus, the above payment signifies that the company has an outsourcing model which is different from that of the assessee.*

9.1.5 We find that the Hon'ble Jurisdictional High Court in *PCIT v/s PTC Software India Private Limited*, reported in (2019) 101 taxmann.com 117 (Bom.), for the assessment year 2009-10 upheld the exclusion of Cosmic Global Ltd., by observing as follows: -

"(II) Cosmic Global Ltd.,

(i) The impugned order of the Tribunal records the fact that Cosmic Global Ltd., had outsourced its services to vendors just as M/s. Vishal Technologies Ltd., had done. In the above facts, the impugned order held that Cosmic Global Ltd., is not functionally comparable and, therefore, could not be included amongst the comparables to determine the ALP of the Respondent's transactions.

(ii) The aforesaid finding of fact by the Tribunal has not been shown to be perverse. In fact, the reasons indicated in the impugned order to hold that Vishal Technologies Ltd., is not a comparable, would equally apply to M/s. Cosmic Global Ltd.,

(iii) Thus, the sub-question (II) as proposed does not give rise to any substantial question of law. Thus, not entertained."

9.1.6 Further, as regards the submission of the learned DR that the assessee is seeking exclusion of its own comparable, as noted in the foregoing paragraphs, there is no estoppel on the taxpayer from pointing out that a particular company has been wrongly taken as a comparable."

Accordingly, we direct the Ld. AO/TPO to exclude Cosmic Global from the final list.

9.2 E4e Healthcare Solutions Ltd.

The Ld. AR has sought for exclusion for this company based on functional differences. The Ld. AR submitted that this company is engaged in healthcare business services, receivable cycle management services and software development for healthcare industry. It is submitted that this company is providing high-end services to its client in the area of healthcare business.

9.2.1 On the contrary, the Ld. DR relied on the orders passed by the authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

9.2.2 It is noted that this company is functionally not similar with that of the assessee and is providing high-end services to its client in the field of healthcare business. It is also noted that, the assessee is providing data processing services to its AE's which is not akin to healthcare services. It is noted that this comparable is into software development and segmental data is not available in respect of the same. Thus in our view, this company cannot be considered due to functional dissimilarities.

We direct the Ld. AO/TPO to exclude E4e Healthcare Solutions Ltd. from the final list.

9.3 Infosys BPO Ltd.

The Ld. AR submitted that this company is functionally not similar with that of the assessee as it is in the business of improving competitive positioning by managing the business of its clients. The Ld. AR submitted that such a giant company cannot be compared with a captive service provider like assessee which is only rendering data processing services to its AE.

9.3.1 The Ld. AR further submitted that this company has a huge turnover of Rs.10,81,00,00,000/- as compared to Rs.83,00,00,000/- earned by assessee under this segment. He submitted that this company also has a very high brand value and marketing expenses which substantially reveals that it is

into sales and marketing activities and also is into brand building and advertisements.

9.3.2 The Ld. DR on the contrary relied on the orders passed by the authorities below. We have perused submissions advanced by both sides in the light of records placed before us.

9.3.3 It is noted that Ld. AR placed reliance on following comparables to support exclusion this company:

1. *VFS Global Services Pvt. Ltd. [ITA no. 1847/Mum./2014 (Mumbai ITAT)]* [Refer page no B1-B28 of the Legal Paper Book]
2. *Pentair Water India Pvt. Ltd. [ITA No. 18 OF 2015 (Bombay High Court)]* [Refer page no B29 B32 of the Legal Paper Book]
3. *Thomson Reuters India Services Pvt Ltd [TS-166-ITAT- 2025(Mum)-TP]* dated 25 February 2025 (Mumbai ITAT) (Refer Para 48 to 52 Page 99 to 101 of the supplementary paperbook)
14. *ICICI Bank Limited [2025] 180 taxmann.com 804 (Mumbai - Trib.)* (Refer page No. B338 to B356 of Legal paperbook - II)

9.3.4 Admittedly, this company is a full-fledged entrepreneur and has been consistently excluded by all the Tribunals having regard to the fact that it is into brand building, owns royalty, owns IPRs and has a huge good-will in its books. We therefore do not find this company to be comparable with that of the assessee which is categorised to be a capital service provider. Accordingly, we direct the Ld. AO/TPO to exclude this comparable from the final list.

C. Software Support Service Segment:

The Ld. AR submitted that assessee is seeking exclusion of following comparables under this segment:

Bodhtree Consulting Ltd., Infosys Technologies Ltd. & Wipro Limited.

10. The Ld. AR submitted that these companies like Infosys & Wipro are functionally different with that of the assessee and is engaged in providing high-end information technology services to its clients. It was submitted that, these companies have substantial revenues from sale of software products and has high turnover which is more than Rs. 2,00,00,00,000/-. The Ld. AR submitted that these companies have huge expenditure on research and development and has significant intangibles with substantial brand value.

10.1 The Ld. AR submitted that these comparables were excluded by coordinate Bench of this *Tribunal* in assessee's own case for assessment year 2007-08 and 2008-09 in a consolidated order passed in ITA Nos. 6986/Mum/2011 and 7216/Mum/2012 vide order dated 13.10.2025.

10.1.1 On the contrary, the Ld. DR placed reliance on the orders passed by authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

10.1.2 The Ld. AR had relied on the coordinate Bench decision in case of *Dun & Bradstreet Information Services India Ltd. Vs. DCIT in ITA NO. 3593/Mum/2012* vide order dated 06.06.2019, wherein these comparables were excluded as functionally not similar to a captive services provider. It is also noted that based on decision, this *Tribunal* in the preceding assessment year excluded these comparables by observing as under:

“In case of Infosys technologies Ltd., & Wipro Ltd., this Tribunal in case of Dun& Bradstreet Information Services India Pvt. Ltd., vs DCIT (supra) observed as under:

4.3 Infosys Technologies Limited

It has been submitted by Ld, Sr. Counsel that this entity is not functionally comparable due to various factors viz. its size, turnover, brand value, scale of operations, diversified activities and owning of intangibles. Reliance has been placed on the following judicial pronouncements in support of exclusion of the same: -

i) Telcordia Technologies India P. Ltd. [Mumbai Tribunal ITA No.7821/Mum/2011 AY 2007-08]

ii) Sumtotal Systems India P. Ltd. [ITA No.1710/Hyd/2011 09/05/2014 AY 07-08]

iii) Adaptec India Pvt. Ltd. [ITA No. 1801/Hyd/2009 31/01/2013 AY 2007-08]

Upon perusal, we find force in the arguments of Ld. Sr. Counsel. The co-ordinate bench of Mumbai Tribunal in the case of Telcordia Tech. India P. Ltd. [supra], relying upon, Agnity India Tech. Pvt. Ltd. [ITA 3856/Del/2010], held that the said entity was giant enterprise and in the area of development of software and it assumes all risks, leading to higher profits and cannot be compared with the company which is captive unit of its parent company assuming only limited risk. Similar views have been expressed in other decisions. Keeping in view the same, we confirm exclusion of the same.

4.4 Wipro Limited

It has been submitted by Ld. Sr. Counsel that this entity is not functionally comparable due to various factors viz. its size, turnover, brand value, scale of operations, diversified activities and owning of intangibles. Reliance has been placed on the following judicial pronouncements in support of exclusion of the same: -

i) Telcordia Technologies India P. Ltd. [supra]

ii) Sumtotal Systems India P. Ltd. [supra]

iii) DE Shaw India Software Pvt. Ltd. [supra]

iv) Virtusa India Pvt. Ltd. [ITA No. 1962/Hyd/2011 30/08/2013 AY 2007-08]

Similar is the situation for this comparable. In decision listed at serial no.1, the co-ordinate bench has directed for exclusion of this entity on the same reasoning as given for exclusion of Infosys Tech. Ltd. The

other decisions also support the submissions. Keeping in view the same, we confirm exclusion of the same.”

10.1.2 Revenue has not been able to bring out any factual differences between the year under consideration or any decision contrary to the view taken by the coordinate bench in a border for decisions. Respectfully following the view taken therein, we do not find any reason to consider Infosys Technologies Ltd., Wipro Ltd. as they are functionally not similar with the assessee and the same is directed to be excluded.

10.2 Bodhtree Consulting Private Ltd.

The Ld. AR submitted that this company is engaged in providing open and end to end web solutions of off-shoring data management, data warehousing etc. It is submitted that the annual reports of this comparable reveal supernatural profits and this company has registered an increase of 67% in the total revenue. The Ld. AR referring to the annual report at page-758 has submitted that segmental details are also not available for the various services rendered by this company. The Ld. AR thus submitted that this company is a full-fledged entrepreneur and accordingly cannot be compared with a capital service provider like assessee.

10.2.1 On the contrary, the Ld. DR relied on orders passed by authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

10.2.2 Admittedly, this company is in the business of software product and was engaged in providing open and end-to-end web

solutions software consultancy and design and development of software, using latest technologies. It is noted that these companies were excluded by *coordinate Bench of this Tribunal for assessment year 2007-08 and 2008-09 (supra)* on identical reasoning.

10.2.3 We do not find any factual similarity on the functions, assets and risk owned by this company viz-a-viz that of the assessee. Accordingly, Bodhtree cannot be considered fit to be included in the final list and the same is directed to be excluded from the final list.

11. KALS Information Systems

The Ld. AR submitted that this company derives income from software services and products. It is submitted that there are no segmental details available in respect of the income that is generated under various segments. The Ld. AR emphasised that this company holds inventory of Rs.71,00,000/- that constitutes 48% of its assets which indicates that it is product developer. It is pointed out that this company was excluded by coordinate Bench of this *Tribunal* in case of *CISCO Systems Services B.E India Branch reported in 270/Bank/2014* vide order dated 17.10.2014 for assessment year 2009-10.

On the contrary, the Ld. DR relied on the orders passed by the authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

It is noted that this comparable has been excluded for the reason that it is into development of software products and does not

have segmental details. It is also noted that this company is engaged in providing training and the entire revenue has been categorised under one segment. We therefore do not find this company to be fit comparable in the case of the assessee. Accordingly, we direct exclusion of this comparable from the final list.

12. The Ld. AR submitted that upon exclusion of the above 4 companies, Genesis International Corporation Ltd. becomes academic as the assessee is within the range of $\pm 5\%$. Accordingly, the same is not adjudicated at this stage and is kept open under considered in an appropriate circumstance.

Accordingly, Ground No.1 raised by the assessee stands partly allowed.

13. Ground No.2 raised by the assessee is in respect of disallowance of repairs and maintenance expenses amounting to Rs.29,47,184/-. The Ld. AR submitted that assessee made payment to Kone Elevators India Pvt. Ltd. amounting to Rs.9,39,584/- and year-end provision for repairs and maintenance expenses amounting to Rs.20,07,600/- was made. It is submitted that the DRP had directed the Ld. AO/TPO to verify the claim of the assessee with respect to Kone Elevators India Pvt. Ltd. and whether TDS was applicable thereon. The Ld. AR submitted that, the Ld. TPO did not follow the directions of the DRP in respect of Kone Elevators India Pvt. Ltd. and disallowed the claim of the assessee at the threshold.

13.1 In respect of the disallowance of Rs.20,07,600/- being the year under provision for repairs and maintenance. The Ld. AR submitted that, the provision was made based on normal

accounting provisions by disallowing the incremental year end provision made on account of repairs and maintenance. It was submitted that substantial portion of the provision being Rs.53,27,329/- had in fact subsequently materialised as corresponding bills were received. The Ld. AR submitted that copies of these bills were submitted before the authorities below.

13.2 The Ld. AR submitted that the remaining portion of the provision against which no bills were received stood reversed in the subsequent year, as the year-end provision of Rs.67,71,400/- was reversed at the beginning of the subsequent year and has been considered while computing income for the subsequent year. He submitted that all these details filed before the authorities below were not verified.

13.3 On the contrary, the Ld. DR relied on the orders passed by the authorities below.

We have perused the submissions advanced by both sides in light of records placed before us.

14. In respect of the disallowance made on payment made to Kone Elevators India Pvt. Ltd., the DRP directions was followed by the Ld. AO. We therefore, direct the Ld. AO/TPO to follow the directions as per the DRP in respect of this claim and to consider the claim of the assessee in accordance with law.

14.1 In respect of Rs.20,07,600/- it is noted that it is near timing issue and no loss of revenue has been caused. The assessee has filed requisite details in support of the provision so made. We are of the opinion that this issue needs to be verified by the Ld. AO having regard to the evidences filed by the assessee in accordance with law. Needless, to say that proper opportunity

of being heard must be granted to assessee in accordance with law.

Accordingly, ground No.2 raised by the assessee stands allowed for statistical purposes.

15. Ground No.3 raised by the assessee is an alternative prayer to ground No.2.

As we already adjudicated ground No.2, we do not find it necessary to consider the alternate plea raised by the assessee in ground No.3.

16. Ground Nos. 4, 5 & 6 raised by the assessee are consequential and premature at this stage, accordingly, no view deserves to be expressed in respect of the same. However, the Ld. AR submitted that there are certain computational that needs to be corrected while computing the interest u/s 234D which may be corrected while passing the OGE to this order.

Accordingly, ground Nos. 4, 5 & 6 raised by the assessee stands allowed for statistical purposes.

17. The assessee has raised legal issue challenging the validity of the final assessment order passed being time barred. It is submitted that this issue may be kept open to be raised in an appropriate circumstances.

Liberty is granted to the assessee to raise this plea in an appropriate situation before the relevant forum.

Accordingly, the additional grounds raised by the assessee vide application dated 16.11.2022 is not adjudicated at this stage and is kept open.

Assessment Year 2010-11

18. Ground No.1 raised by the assessee seeking exclusion of following comparables under following two segment:-

A. Data Processing Service Segment:

- *e4e Healthcare Solutions Ltd.*
- *Infosys BPO Ltd.*
- *ICRA Online Ltd.*
- *Cosmic Global Ltd.*

And assessee is seeking Inclusion of *R-Systems International Ltd.*

Assessee is seeking exclusion of following comparables under

B. Software Support Service Segment.

The comparables sought for exclusion:

- *Infosys Ltd.*
- *KALS Information Systems*
- *WIPRO Ltd.*
- *Persistent Systems Ltd.*
- *Thirdware Solutions Ltd.*
- *Larsen and Toubro Infotech Limited*
- *Sasken Communication Technologies Ltd.*

18.1 At the outset it is noted that following comparables has already been excluded in the preceding paras while considering identical issue for Assessment Year 2009-10 under Data Processing Service Segment:

- *Cosmic Global Ltd.*
- *e4e Healthcare Solutions Ltd.*
- *Infosys BPO Ltd.*

18.2 It is noted that above comparables were excluded on identical facts and circumstances for Assessment Year 2009-

10 in Para 9 to 9.1.6, 9.2 to 9.2.1 and 9.3 to 9.3.4 hereinabove. Nothing contrary has been brought on record by the authorities below.

Respectfully following the observation therein on identical facts, these three comparables are directed to be excluded mutatis mutandis.

19. The assessee is seeking inclusion of R-Systems International Ltd. for the year under consideration.

19.1 At the outset the above comparables was included after considering various observations as recorded in Paras 8.7 to 8.8.1.

Respectfully following the same, R-Systems International Ltd., is directed to be included in the final list mutatis mutandis.

ICRA Online Ltd.

20. Insofar as ICRA Online Ltd is concerned, the Ld. AR submitted that this company is functionally not similar with that of Assessee. The Ld. AR placed reliance on annual report of the company to submit that it outsources and a technology solution provider. It is submitted that this company has two streams of business namely knowledge process outsourcing and information services and technology solutions. The Ld. AR placed reliance on the decision of coordinate Bench of *Bangalore Tribunal* in case *Unisys India Ltd. in ITA No.2024/Bang/2017* vide order dated 17.05.2022.

20.1 The Ld. AR further submitted that this comparable was excluded but the DRP for Assessment Year 2008-09. He

referred to the observations of the DRP for A.Y. 2008-09 at Pf-77 to 78 of supplementary paperbook.

20.2 On the contrary the Ld. AR relied on the orders passed by authority below.

We have perused the submissions advanced by both sides in the light of records placed before us.

21. It is noted that for A.Y. 2008-09, in assessee's own case this company was excluded as it fails the export revenue filter of more than 75% for the year under consideration, also this company does not satisfy this filter as it has income from export of services at 60.68% only.

21.1 We therefore do not find any force in the Ld. TPO's observation in inclusion of this company.

We thus direct exclusion of this company from the final list.

22. In Software Support Service Segment it is noted that KALS Information Systems and Wipro Ltd., has been excluded in preceding paras while deciding the issue for Assessment Year 2009-10 in paras 10 to 10.1.2 hereinabove.

The Ld. AR has not been able to bring anything contrary to the observations hereinabove.

Respectfully following the observations in para 10 to 10.1.2 we direct exclusion of KALS Information Systems and Wipro Ltd. from the final list.

23. Infosys Ltd. and Larsen & Toubro Infotech Ltd.:

It is submitted that these companies have significantly high turnover and undertakes large scale operations. It is

submitted that these companies possess high brand value in the market and own huge intangibles.

23.1 On the contrary, the Ld. DR relied on the order passed by authorities below.

We have perused the submissions advanced by both sides in light of records placed before us.

23.2 This *Tribunal* has been consistently taking the view that companies having huge brand value as well as intangible assets cannot be compared with a captive service provider. We draw support from the decision of *Hon'ble Delhi High Court* in case of *Agnity India Technologies Ltd. Vs. ITO* reported in (2015) 58taxmann.com167.

It is also noted that these companies provide end to end business solutions that leverage cutting edge technologies, thereby enabling clients to enhance business performance.

In view of the above, we do not find L&T Infotech Ltd. and Infosys Ltd. to be a fit comparable to the assessee.

Accordingly, these comparables are directed to be excluded from final list.

24. Thirdware Solutions Ltd., and Sasken Communication Technologies Ltd.,

The assessee raised objection that these companies have revenue from software services, software products. It is submitted that Sasken has revenue from software services, software products and other services. For which segmental details are not available.

24.1 On the contrary, the Ld. DR relied on orders passed by authorities below.

We have perused the submissions advanced by both sides in light of records placed before us.

It is noted that segmental details are not available in respect of SWD segment of these companies. Therefore, in the absence of segmental relevant data and particularly operating margins, the composite data cannot be considered as comparable with the assessee for software development services segment. We therefore do not find force in the observations of the authorities below to retain these companies in the final list.

Accordingly, these companies are directed to be excluded from the final list.

25. Persistent Systems Ltd

The assessee objected to the inclusion of this company for the reasons that it is engaged in software product designing and analytic services. It is submitted that this company is functionally different and further that segmental results are not available.

25.1 The Ld. AR submitted that this comparable was included by the assessee in the TPSR, however the same is sought for exclusion. The Ld.AR relied on the decision of *Hon'ble Chandigarh Special Bench* in case of *Quark Systems Pvt.Ltd* reported in (2010) 38 SOT 307. He also placed reliance on following decisions in support :

4. *ST Microelectronics Private Limited [ITA No.3688/Del/2018] (Delhi ITAT) (Refer page no.B-291-B-316 of Compilation)*

5. Assessee can reject a comparable even though it has considered the same in its TP Study, if it points out and justifies that it had wrongly taken the comparable:

a *Tata Power Solar Systems Ltd. [2017] 245 Taxman 93 (Bombay HC)*

b . *Quark Systems Pvt. Ltd (2010) 38 SOT 307 (Chandigarh ITAT)*

25.2 The Ld.CIT(A) submitted that this *Tribunal* in following decisions have found that Persistent Systems Ltd., is engaged in product development and product design services while the assessee is a software development services provider and that the segmental details are not given separately:

1. *Emerson Electric Company (India) Private Limited [ITA No.372/Mum/2017 (Mumbai ITAT)] [Refer page no. B119-8149 of the Legal Paper Book]*

2. *Open Solutions Software Services Pvt Ltd [ITA 201/2018] (Delhi HC) and ITA No. 7078/Del/2014 (Delhi ITAT) (Refer page no.B-243-B- 290 of Compilation]*

3. *Cash Edge India Pvt Ltd [ITA 279/2016] (Delhi HC) and ITA No.64/Del./2015 (Delhi ITAT) (Refer page no B-360-B-393of Compilation]*

We have perused the submissions advanced by both sides in light of records placed before us.

This company is engaged in diversified activities and earning revenue from various activities including licencing of products, royalty on sale of products as well as income from maintenance contract, etc., the same cannot be considered as functionally comparable with the assessee. Further, this company also earns income from outsource product development. In the absence of

any segmental data of this company, this company cannot be compared with the assessee. Further, the assessee has also pointed out that there was an acquisition and restructuring during the year under consideration.

We therefore direct this company to be excluded from the final list of comparables.

Accordingly ground no.1 raised by the assessee stands allowed.

Ground Nos. 2-5 are consequential in nature and therefore does not require any adjudication

In the result, appeals filed by the assessee stands partly allowed.

Order pronounced in the open court on 20/02/2026

Sd/-

**(GIRISH AGRAWAL)
Accountant Member**

Sd/-

**(BEENA PILLAI)
Judicial Member**

Mumbai:
Dated: 20/02/2026
Ashwani Rao
Sr. Private Secretary

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)
ITAT, Mumbai